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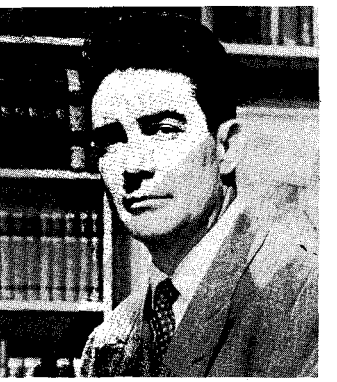

DAN SMOOT

ELECTORAL COLLEGE -- PART III

Americans generally think of the Founding Fathers as a group of wealthy, periwigged old gentlemen, all of one mind, who met at Philadelphia in 1787 and, after some polite and leisurely conversation, wrote a Constitution.

The 55 men who attended the Constitutional Convention were delegates chosen from 12 of the 13 states. The oldest among them, Benjamin Franklin, was 81. The youngest was Jonathan Dayton, 27. Their average age was 42. They were merchants, lawyers, judges, planters, officials of state governments. Half of them were college graduates. Some were outstanding scholars.

They brought to the Convention an immeasurable wealth of information about governments — of ancient and contemporary times; and they represented more diversity of opinion about what the American government should be than is represented in the present Congress.

After almost 4 months of deliberations, they produced the most nearly perfect plan of government ever devised by men — delivering to 18th Century Americans, as a heritage intended for all succeeding generations, what Prime Minister Gladstone called "the most wonderful work ever struck off at a given time by the brain and purpose of man."

Above all else, the Founding Fathers feared excesses of political power. From their vast knowledge of history, they knew that unlimited political power cannot safely be trusted to *anyone* — not to appointed officials of government, not to elected representatives of the people, not to the people themselves. Hence, they devised a system to control political power by dispersing and balancing it so that too much could not be concentrated in any one place.

The power of large states was balanced against that of small ones. Some power was taken from states and given to the federal government; and state governments were given some control over federal power.

The federal government was divided into 3 branches, each with a check on the power of the others; but only one-half of one of the three branches was answerable directly to the people.

THE DAN SMOOT REPORT is published weekly by The Dan Smoot Report, Inc., Box 9538, Dallas, Texas 75214 (office at 6441 Gaston Ave.). Subscriptions: $18.00 for 2 years; $10.00, 1 year; $6.00, 6 months; first class, $12.50 a year; airmail, $14.50. Dan Smoot was born in Missouri, reared in Texas. With BA and MA degrees from SMU (1938 and 1940), he joined the Harvard faculty (1941) as a Teaching Fellow, doing graduate work in American civilization. From 1942 to 1951, he was an FBI agent; from 1951 to 1955, a commentator on national radio and television. In 1955, he started his present independent, free-enterprise business: publishing this REPORT and abbreviating it each week for radio and TV broadcasts available for commercial sponsorship by business firms.

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State legislatures were given power to choose U. S. Presidents and U. S. Senators, who, in turn, were given power to choose members of the judicial branch of the federal government. Only the House of Representatives, elected by the people, was to be directly answerable to the people. The people's control over the other two-and-one-half branches of the federal government was to be indirect, through their state legislatures.

By thus balancing federal power against state power, and dividing federal power into three branches, each acting as a counterweight upon the others, the Constitution created a federal system in which the people, though retaining ultimate political power over all agents and agencies of government, were themselves protected from demagoguery, mob psychology, corruption, and fraud, which are fatal weaknesses of direct popular government.

The perfection of our federal system was seriously impaired when the 17th Amendment (adopted in 1913) provided for direct popular elections of U. S. Senators. It has been even more seriously impaired by the present method of electing Presidents and Vice Presidents. The method evolved illegally, because state legislators became subservient to political parties, and surrendered to those parties an important responsibility which the Constitution assigns to state legislatures.

As it is used — or abused — the electoral college system is a travesty on the elective process. As created by the Constitution, the electoral college system is a superb means of electing the two highest officials of the federal government.

Article II, Section I of the Constution provides:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an office of Trust or Profit under the United States, shall be appointed an Elector.

"The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."

On the day chosen by Congress, the Electors cast two votes each, one for President, one for Vice President. To win, a candidate must have a majority of all electoral votes. If no candidate for President has a majority, the House of Representatives, voting by state delegations (1 vote for each state) elects a President from the three candidates having the most electoral votes. If no candidate for Vice President has a majority, the Senate elects from the three candidates with the most electoral votes.

Each State shall appoint . . . Electors is an imperative requirement that electors be chosen as agents responsible to state legislatures which, in turn, are responsible to the people; but state legislatures now permit the appointment of electors by irresponsible political bodies (nominating conventions or state committees), generally dominated by office-holders and office-seekers and their friends.

It is erroneous to say that legislatures abdicated their responsibility in order to give the people the privilege of electing Presidents. They did it to serve the interests of political parties.

The people are given the limited choice of endorsing, indirectly (that is, by voting for electors unknown to the people), one or the other of the party candidates; that limited choice is vitiated by political-party catering to organized special-interest groups and by the winner-take-all method of counting electoral votes.

The people have infinitely less control over election of a President in the method now used than in the legal method prescribed by the Constitution.

If you do not like Johnson as President, whom can you hold responsible for his selection? The 43 million anonymous people who cast secret ballots for his electors in 1964? The 1964 Democrat National Convention, a temporary body that went out of existence as soon as Johnson and Humphrey were nominated? If Johnson had been legally elected — by electors appointed by state legislatures — whom could you hold responsible? The

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men who represent you in your state legislature!

The Constitution gave the people rather effective, *indirect* control of presidential elections, the framers knowing that *direct* control by the people is a practical impossibility.

Throughout the vast body of general voters a feeling of hopelessness prevails in every presidential election. What good can one voter do when he is just one among 70 million?

This feeling of fatalistic surrender to the multitude which they cannot influence is one reason why more than half of all qualified Americans never bother to vote in presidential elections. The feeling spills over and dampens voter interest in other elections.

Only a minority of voters participates in presidential elections; but only a fraction of a minority participates in local and state elections. Why? Political power has gravitated to Washington, where most of it is concentrated in the presidency. Millions of voters consider local and state elections petty and perfunctory.

If state legislatures were appointing the agents who choose the President, much of this voter apathy would disappear. Every member of a state legislature would be enormously important. Working for, or against, state legislative candidates in the relatively small home-town districts they represent could have real meaning to a voter. He would not be pitting his individual influence against that of organized voting blocs in some faraway city — would not be dropping his one vote into a pile with 70 million others. He could have a measurable effect in selecting the most important elected officials in the world.

In *The Federalist Papers* (No. 68), Alexander Hamilton explained that the electoral college system was devised to guard presidential elections against "cabal, intrigue, and corruption" and against "tumult and disorder."

Anyone with only a cursory knowledge of the cabal, intrigue, and corruption which are now standard features of presidential nominations — anyone who has ever watched the tumult and disorder of a nominating convention — should admire the deep wisdom of the Founding Fathers. Television has made political nominating conventions even worse atrocities than they were before. Now, they are in no sense deliberative bodies. They are rostrums from which demagoguery and cynical appeals to special-interest groups are broadcast to an audience numbering millions.

The Constitution prohibits any "*person holding an office of trust or profit under the United States*" from having any part in the election of a President. As Hamilton phrased it:

"And they [the people] have excluded from eligibility to this trust [electing a President] all those who from situation might be suspected of too great devotion to the President in Office."

Yet, political nominating conventions which select our Presidents are dominated by federal office holders. Millions getting money from the federal treasury participate in presidential elections, most of them supporting the presidential candidate whose election will mean continuation of their *profit under the United States.*

The Act to Prevent Pernicious Political Activities (1939) prohibits persons in the Executive Branch of the federal government from taking any part in political campaigns. The President and most members of his Cabinet and a multitude of lesser bureaucrats consistently violate this law, the President being the most blatant offender. Remember Johnson's trip to the Democrat National Convention in 1964 to place Hubert Humphrey's name in nomination? Remember all of the costly "non-political" swings-around-the-country that every President since Roosevelt has made in every election year?

These illegal, tax-consuming, demagogic practices would be stopped if we reestablished the constitutional system of electing Presidents.

How It Can Be Done

There is a simple, practical way to reestablish the constitutional system — a way advocated for many years by Thomas James Norton (now deceased). Norton discussed the causes and consequences of the present method, and the need for his proposed reform, in Chapter XV of *Undermining the Constitution: A History of Law-*

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less Government, published by Devin-Adair, 1951.

In 1957, John P. Rogge, a Houston, Texas, attorney started a movement for the Norton proposal; but the proposal, though heartily approved by constitutional lawyers all over the country and by many state legislators, never made much headway. It is, however, the only electoral reform that constitutionalists should support.

Norton pointed out something so obvius that it is generally overlooked: namely, that the constitutional system of electing Presidents can be reestablished by state legislatures without a constitutional amendment, and without action by the federal Congress. State legislatures can act one at a time, instantly making the reforms needed in their own states, not being required to act in unison with other states in order to make the reforms general throughout the country — as is the case with constitutional amendments.

Constitutionalists in every state should begin *now*, persuading state legislators to make whatever changes necessary in state election laws, to guarantee that state legislatures reassume, immediately, their constitutional duty to appoint presidential electors.

That is all that is needed to reactivate the best system possible for electing Presidents of the United States.

This job can be done. In trying to influence national politicians, constitutionalists often find they cannot exert as much influence as liberals can. But, relatively speaking, there is not much competition for the attention of state legislators. Most of them would be enormously impressed by a drive, on the part of their constituents, for their support of a measure which would restore to them a constitutional role of immeasurable importance.

Why It Should Be Done

Envision a presidential election if all state legislatures appointed presidential electors. Political parties could continue to make their own nominations as they please, but the country would not be foredoomed to take one of their nominees. A man who wanted to be President could explain his program and philosophy of government to the 43 electors in New York, to the 3 in Nevada, to the 10 in Alabama, to the 4 in South Dakota, to the 40 in California. The electors would choose the President.

There would still be bribery, corruption, and special-interest pressures as now; but illegal or unethical actions could be clearly pinpointed as such. Guilt could be fixed, and guilty persons held accountable, to public opinion if not to a court of law. In 1953, Eisenhower appointed Earl Warren Chief Justice of the Supreme Court, not because Warren was qualified for the job, but because he had delivered votes of the California delegation to Eisenhower at the 1952 Republican Convention. Such *de facto* bribery is now so commonplace that it is almost beyond criticism. In fact, those who criticize the bribery are generally more loudly condemned than those who practice it.

If, however, a presidential candidate bribed a group of electors with government jobs or otherwise, the malodorous act would be a stench in the nostrils of the people; and the people could do something about it. How electors voted would be a matter of public record. If their votes were displeasing to the people of their state, the people could take political action against state legislators who appointed the electors.

This *legal* system of electing presidents would give the people *some* control. It would be a gigantic step toward reestablishing states rights in the magnificent federal system that our Constitution created.

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